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HOUSE . . . . . No. 5302

The Commonwealth of Massachusetts

REPORT

of the

SPECIAL COMMITTEE OF THE HOUSE

ESTABLISHED TO MAKE

AN INVESTIGATION AND STUDY OF

LEAD PAINT LAWS.

(under House order No. 6321 of 1992
and most recently revived and continued
by House order No. 5258 of 1993)

July 7, 1993.

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Recommendations of the Special Committee

to

Study the Lead Paint Statutes

of

The Commonwealth of Massachusetts

July 7, 1993

The Special Committee

July 7, 1993

To The Members of the General Court:

In December, 1992, Speaker Charles F. Flaherty, recognizing the dangers of lead paint poisoning, the difficulties encountered by property owners attempting to delead and the need for more effective legislative response, created a special commission of legislators to conduct an exhaustive study of the existing lead paint statutes in Massachusetts. The Committee's mission was to make recommendations which would ultimately compose legislation that protected children from the perils of lead paint poisoning with swift enforcement by public health agencies, effective public education for children, tenants and property owners and measures to encourage more property owners to undertake lead paint removal and abatement. The Committee, in its deliberations, was challenged and guided by the significant health consequences of lead paint poisoning to children and the need to provide property owners who act responsibly and in good faith with reasonable economic alternatives and legal standards.

Today, the House Committee on Ways and Means reports out a bill entitled "An Act to Amend the Lead Paint Statutes", adopting the Committee's recommendations of amendments to the Commonwealth's existing lead paint statutes.

The Committee's members, in supporting this legislation, recognize the need for Massachusetts to be a continuing model for lead paint legislation in the United States. The proposed legislation, in embracing the Committee's recommendations, dramatizes the scope and impact of the lead paint poisoning problem while providing a more reasonable and consequently effective remedy for children, families, public health officials and property owners. The Committee's recommendations, as adopted by the Ways and Means Committee today, are a strong and rigorous legislative response to the serious health problem posed by lead paint in the Commonwealth today. With this legislation, deleading and abatement of lead paint will no longer be a lofty goal but will be an accepted reality.

By the Committee:

Thomas M. Finneran
Carmen D. Buell
John E. McDonough
Walter A. DeFilippi
Raymond A. Jordan, Jr.

Members of Special Committee to Study the Lead Paint Statutes

Representative Thomas M. Finneran, Chairman,
Committee on Ways and Means

Representative Carmen D. Buell, Chair,
Committee on Health Care

Representative Raymond A. Jordan, Jr., Chairman,
Committee on Housing and Urban Development

Representative John E. McDonough, Vice Chairman
Committee on Post Audit and Oversight

Representative Walter A. DeFillippi,
First Assistant Minority Leader

The Special Committee

July 7, 1994

To the Members of the General Court:

In December, 1992, Speaker Charles K. Flaherty, recognizing the dangers of lead paint poisoning, the difficulties encountered by property owners attempting to delead and the need for more effective legislative response, created a special commission of legislators to conduct an exhaustive study of the existing lead paint statutes in Massachusetts. The Committee's mission was to make recommendations which would ultimately comprise legislation that promoted children from the perils of lead paint poisoning while at the same time by public health agencies, effective public education for children, families and property owners, and measures to encourage more property owners to undertake lead paint removal and abatement. The Committee is to be commended for its challenged and guided by the paramount health consequences of lead paint poisoning in children and the need to provide property owners who act responsibly and in good faith with reasonable economic alternatives and legal standards.

Today, the House Committee on Ways and Means reports out a bill entitled "An Act Regarding the Lead Paint Statutes," adopting the Committee's recommendations of amendments to the Commonwealth's existing lead paint statutes.

The Committee's proposal, in supporting this legislation, recognizes the need for Massachusetts to be a continuing model for lead paint legislation in the United States. The proposed legislation, in minimizing the Commonwealth's economic obligations, eliminates the scope and impact of the lead paint poisoning problem while providing a more reasonable and consequently effective strategy for children, families, public health officials and property owners. The Committee's recommendations, as adopted by the Ways and Means Committee today, are a strong and rigorous legislative response to the serious health problem posed by lead paint in the Commonwealth's children. With the legislation, deleading and abatement of lead paint will no longer be a lofty goal but will be an accepted reality.

If the Committee

Thomas M. Finneran
Carmen D. Buell
John F. McDonough
Walter A. Dorlington
Marjorano A. Jordan, Jr.

Key Provisions of Lead Paint Legislation

An Act to Amend the Lead Paint Statutes

- Abatement and containment of lead where premises occupied by child under six years of age
- Establishment of comprehensive program of lead poisoning detection
- Tax Credit of $2,500 per unit for deleading
- Maintains sanitary code as remedy when property owner fails to comply or comes out of compliance
- Allows property owners to delead premises but requires education approved by the Commission of Public Health and post-deleading inspections by licensed deleading inspector
- Maintains swift and exact enforcement where dangerous levels of lead found to exist but provides measures to encourage deleading where owners act in good faith
- Directs Department of Public Health to promote the education of all persons, including parents and property owners on the hazards of lead poisoning and its prevention
- Imposes greater duty on sellers, real estate agents and property owners to inform tenants of existence of lead paint and its hazards
- Substantive fine and/or imprisonment for property owners who fail to comply or come out of compliance
- Establishes program of interim control measures to address urgent lead paint hazards
- Establishes Program of in-place management
- Subjects property owners to negligence standard of liability where property owner is complying with order to correct violations of a dangerous lead level or remains in compliance, but subjects owner to strict liability where owner does not comply or unit falls out of compliance
- Provides "Safe Harbor" for one year for lenders who acquire legal title to property by foreclosure

- Directs Department of Public Health to promulgate rules, regulations and standards and further provisions of this act subject to review by Joint Committee on Health Care and Joint Committee on Housing and Urban Development

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Three.

AN ACT TO AMEND THE LEAD PAINT STATUTES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Subsection (e) of section 6 of chapter 62 of the General Laws is hereby amended by deleting the subsection and substituting in its place the following: —

(e) Any owner or tenant of a residential premises who pays for the containment or abatement of any paint, plaster or other accessible structural materials containing dangerous levels of lead or who pays for the replacement of one or more window units in a dwelling unit constructed prior to 1978 for the purpose of bringing a dwelling unit into compliance with the provisions of sections one hundred and ninety through one hundred and ninety-nine A of chapter one hundred and eleven concerning materials containing dangerous levels of lead shall be allowed a credit in the amount of the cost of said removal or replacement or two thousand five hundred dollars per dwelling unit, whichever is less. Such credit shall include window replacement done for the purposes of lead abatement. Such credit shall be allowed for the containment, abatement or replacement of any paint, plaster or other accessible structural materials containing dangerous levels of lead only if (i) the presence of lead is established by an inspector licensed by the childhood lead poisoning prevention program, and (ii) following such removal, the owner or tenant obtains a letter of compliance or an interim control letter from a licensed inspector pursuant to sections 197C and 197D of chapter one hundred and eleven and files with the department of revenue such letter of compliance or interim control letter and a certification, in recordable form, stating the number of dwelling units, as defined in the state sanitary code for which such credit is being claimed. Any taxpayer eligible for the foregoing tax credit for the then taxable year may carry forward any such unused

credit or any unused portions thereof and apply it to his tax liability in any one or more of the succeeding seven taxable years. The commissioner shall, in consultation with the director of the childhood lead poisoning prevention program and the commissioner of the department of labor and industries, promulgate regulations to aid in the implementation of this section.

SECTION 2. Chapter 111 is hereby amended by striking out section 190 in its entirety and inserting in place thereof the following new section: —

Section 190. The department shall establish a statewide program for the prevention, and screening, diagnosis and treatment of lead poisoning, including elimination of the sources of such poisoning, through such research, educational, epidemiologic and clinical activities as may be necessary.

The commissioner shall appoint a lead poisoning control director, who shall serve at the pleasure of the commissioner. The director shall be responsible, subject to the authority of the commissioner, for carrying out and administering all programs created pursuant to this section through section 199B except as otherwise indicated herein. As used in this section and the following sections, "director" shall refer to the lead poisoning control director. The director may contract with any agencies, individuals or groups for the provision of necessary services, subject to appropriation; and shall issue and from time to time, amend, such rules and regulations as may be necessary; provided that such rules, regulations or amendments shall be filed for review with the joint committee on health care and the joint committee on housing at least thirty days before the effective date of such rules, regulations and amendments. The governor shall appoint an advisory committee for the lead poisoning prevention program, which shall consist of thirteen members who shall serve at the pleasure of the governor at least four of whom shall be physicians or persons active in the field of public health; at least two of whom shall be parents of children under six years of age who reside in a lower-income urban area; at least one of whom shall be a representative of the Massachusetts Rental Housing Association; at least one of whom shall be a representative of the Massachusetts Bankers Association; at least one of whom shall be a representative of the Massachusetts Association of Realtors; and at least one

34 of whom shall be a representative of the property and casualty
35 insurance industry. The committee shall advise the director on
36 matters of policy; shall be consulted by the director prior to the
37 issuance of rules and regulations; and shall perform such other
38 duties as the director may request. The members of the advisory
39 committee shall not be paid for their services, but they may be
40 reimbursed for travel and other expenses necessary for the
41 performance of their duties. As used in the following sections,
42 "advisory committee" shall refer to said committee.

1 SECTION 2A. Chapter 111 is hereby further amended by
2 adding after Section 192A the following new section: —
3 Section 192B. There shall be a surcharge on fees assessed by
4 certain boards of registration, or state agencies for the licensure
5 or certification of certain professionals and on fees assessed for
6 the renewal of such licensure or certification. The amount of the
7 surcharge shall be as follows: a twenty-five dollar surcharge to
8 those persons licensed by the board of registration of real estate
9 brokers and salesmen; a twenty-five dollar surcharge to those
10 persons licensed by the department of labor and industries to
11 perform deleading services; a twenty-five dollar surcharge to those
12 persons licensed by the department of public health to perform
13 lead inspections; and a one hundred dollar surcharge on the
14 annual licensing fee paid by mortgage brokers, mortgage lenders,
15 and small loan agencies registered with the division of banks.
16 The court of the commonwealth shall impose an additional
17 assessment of one hundred and fifty dollars against any person
18 who is convicted of a violation of sections 194A or 197 of this
19 chapter or against whom a finding of sufficient facts for a
20 conviction is made on a complaint charging such a violation.
21 The department of public health's childhood lead poisoning and
22 prevention program shall promote the education of all persons
23 including, parents, and property owners, on lead poisoning and
24 its prevention. The director of said program shall prepare
25 educational materials, the content of which shall include but not
26 be limited to a discussion of safety measures which can be taken
27 to reduce the incidence of lead poisoning in children; available
28 community and health care resources in all geographic regions
29 across the commonwealth useful in the matter of lead poisoning
30 and prevention; and any other information deemed important by

31 the director and the advisory council with regard to said matter.
32 Such educational materials shall be made available to, but not
33 limited to, hospitals, physicians' offices, community health
34 centers, educational institutions, day care centers, and programs
35 providing public assistance or social services. Further, the director
36 shall contract or associate with public and private agencies and
37 organizations for the preparation of educational materials on lead
38 poisoning prevention, other pertinent resource information on the
39 matter of lead poisoning and conducting educational programs.
40 Publication of educational materials shall not subject any agency
41 or organization to liability under section 199 of this chapter.

1 SECTION 3. Section 194 of chapter 111, as so appearing, is
2 hereby further amended by striking said section and inserting in
3 place thereof the following: —
4 Section 194. The director shall establish a comprehensive
5 program for detection of sources of lead poisoning. Such program
6 shall attempt, to the extent permitted by appropriations, to locate
7 all residential premises in which the paint, plaster or other
8 accessible structural material contains dangerous levels of lead.
9 The means of detection and the amount of lead in the paint, plaster
10 or other accessible structural material that produces the danger
11 of lead poisoning shall be determined by regulation by the director
12 in accordance with sound medical practice and current technical
13 knowledge. Such program of detection may, to the extent that
14 all appropriate residential premises are not inspected, give priority
15 in inspections to those residential premises located in areas where
16 significant numbers of lead poisoning cases have been reported,
17 and in which children under six years of age reside.
18 Upon the request of any occupant, the director may cause to
19 have the occupant's premises inspected, within a reasonable time,
20 not to exceed ten days, unless systematic inspection of the area
21 in which the person requesting the inspection resides is scheduled
22 within thirty days, in which case said inspection may be deferred
23 up to twenty additional days.
24 When the director is informed of a case of lead poisoning
25 pursuant to sections one hundred and ninety-one or one hundred
26 and ninety-three, or otherwise, he shall cause to have inspected
27 the residential premises in which the victim resides, or has resided
28 within the past twelve months, if the occupants of said residential

29 premises consent, after reasonable notice, to such inspection. If
30 the occupant refuses admittance, an agent of the director or of
31 any local board of health or code enforcement agency may apply
32 for a search warrant to permit entry. A court may issue a warrant
33 upon a showing that a victim of lead poisoning resides, or has
34 resided within the past twelve months in said residential premises.
35 The findings of such inspection shall be reported to the director
36 and to the appropriate enforcement authorities.
37 A dangerous level of lead found in residential premises
38 inspected pursuant to this section or otherwise, shall be reported
39 immediately to the owner of the building, all mortgagees and lien
40 holders of record, the director, and all affected tenants as outlined
41 below. The owner of such building shall bring the premises into
42 compliance within the time established by regulations promul-
43 gated by the department of public health. Except as otherwise
44 provided, abatement or containment of lead shall not be required
45 unless the unit has been occupied by a poisoned child within the
46 past twelve months or is occupied by a child under six years of
47 age. When dangerous levels of lead are present on the exterior
48 of the premises or in common areas, notice shall be given to all
49 occupants of the premises; and when such levels are present only
50 within particular units, notice shall be given to the occupants of
51 the units involved. The director shall promulgate regulations
52 specifying the form and content of all required notices.
53 When a dangerous level of lead is found in residential premises
54 inspected pursuant to this section, or otherwise, the director shall
55 cause to have screened all children under six years of age, and
56 such other children as he may find advisable to screen, residing
57 or who have resided within the past twelve months in said
58 residential premises. The results of such screening shall be
59 reported to the director, the affected individual and his parent or
60 legal guardian. The director shall inform such other persons or
61 agencies as he deems advisable, subject to the provision of section
62 one hundred and ninety-one relating to the names of affected
63 individuals. The director shall provide by regulation for the
64 implementation by local boards of health, code enforcement
65 agencies and housing inspection agencies of the provisions of this
66 section and the periodic reporting to him of the results of all
67 inspections of residential premises conducted hereunder by said
68 boards and agencies.

69 The director shall maintain comprehensive records of all
70 inspections conducted pursuant to this section. Such records shall
71 be geographically indexed in order to determine the location of
72 areas of relatively high incidence of dangerous lead levels. Such
73 records shall be public records. A summary of the results of all
74 inspections conducted pursuant to this section shall be released
75 annually, or more frequently if the director so determines, to all
76 interested parties.

1 SECTION 4. Said Chapter 111 is hereby further amended by
2 striking section 194A.

1 SECTION 5. Section one hundred and ninety-five of chapter
2 one hundred and eleven of the General Laws is hereby amended
3 by striking the second sentence of the second paragraph and
4 inserting in place thereof the following: —
5 When certified as a true copy by the custodian of such records,
6 a copy of any report of said laboratory or any division thereof,
7 or of any local board of health, code enforcement agency, or
8 housing inspection agency duly trained and authorized by the
9 director to implement the provisions of this chapter and to
10 conduct inspections for the presence of dangerous levels of lead
11 or lead determinations shall be admissible in any judicial
12 proceeding without further authentication by either the
13 laboratory or by the agency for which said report was made and
14 shall be prima facie evidence of the facts stated therein.

1 SECTION 6. Chapter 111 is hereby further amended by
2 striking out section 197 in its entirety and inserting in place thereof
3 the following new section: —
4 111:197. Duty of residential premises owners; abatement or
5 containment of offending paint, plaster or other accessible
6 structural material; violations, punishments and enforcement.
7 Section 197. (a) Whenever a child under six years of age
8 resides in any residential premises in which any paint, plaster or
9 other accessible structural material contains dangerous levels of
10 lead, the owner shall contain or abate said paint, plaster or other
11 accessible structural materials as required by this section so as to
12 make the premises in compliance with this act. For the purposes

13 of this section and sections one hundred and ninety to one hundred
14 and ninety-nine B, "abatement" shall mean the removal or
15 replacement of paint, plaster or other structural material
16 containing dangerous levels of lead; "containment" and "in-place
17 management" shall mean the remaining in place and the
18 encapsulation, covering or enclosing by means authorized by the
19 department, of intact paint, plaster or other structural material
20 containing dangerous levels of lead. Whenever any such
21 residential premises containing said dangerous levels of lead
22 undergoes a change of ownership and as a result thereof, a child
23 under six years of age will become a resident therein, the new
24 owner shall contain or abate said paint, plaster, or other accessible
25 structural material as required by this section so as to make the
26 premises in compliance with this act.
27 (b) For the purposes of this section and sections one hundred
28 and ninety to one hundred and ninety-nine A, "owner" means
29 every person who alone or jointly or severally with others (i) has
30 legal title to any dwelling unit, residential premises, or residential
31 property; (ii) has charge or control of any dwelling unit,
32 residential premises or residential property as an agent who has
33 authority to spend money for compliance with the state sanitary
34 code, executor, administrator, trustee or guardian of the estate
35 or the holder of legal title, (iii) is an estate or trust of which such
36 dwelling unit, residential premises or residential property is a part,
37 or the grantor or beneficiary of such an estate or trust; or (iv) is
38 the association of unit owners of a condominium or cooperative,
39 which shall he considered an owner solely with respect to common
40 areas and exterior surfaces and fixtures; provided, however, that
41 the term "owner" shall not include a secured lender except to the
42 extent provided in section 197F.
43 (c) The director shall promulgate regulations within ninety
44 days of enactment of this legislation to establish standards,
45 including but not limited to differentiating between intact paint
46 and deteriorating paint, by which an inspector licensed by the
47 department makes an assessment of a premises for determination
48 as to whether the owner shall proceed to letter of compliance
49 through an in-place management plan or to a letter of compliance
50 through an abatement-plan pursuant to said section 197C to bring
51 said premises in compliance with this act.

52 (d) Excluding secured lending institutions, owners of premises
53 with four or less dwelling units, shall, pending an assessment of
54 said premises by a licensed inspector, be eligible for an in-place
55 management plan and a letter of compliance thereto. An in-place
56 management plan shall be predicated on containment of paint,
57 plaster or other structural materials containing dangerous levels
58 of lead. If, however, in the determination of a licensed inspector
59 such a premises is deemed ineligible for an in-place management
60 plan, the owner must proceed to a letter of compliance through
61 an abatement plan.
62 (e) Owners of premises with five or more dwelling units and
63 secured lending institutions in actual physical possession pursuant
64 to applicable law of any premises containing dwelling units shall
65 proceed to a letter of compliance through an abatement plan.
66 However, the director may, upon application of said owners, grant
67 a waiver allowing for in-place management.
68 (f) Prior to the beginning of the containment or abatement of
69 paint, plaster or other accessible structural material in a particular
70 unit, the owner or his agent shall notify the occupants of the unit,
71 the director, the department of labor and industries and the local
72 board of health or code enforcement agency of the date on which
73 such containment and abatement will occur and the method(s)
74 that will be used. Notice to the tenant or occupant only shall be
75 required where doors, windows, woodwork or other elements or
76 fixtures are being removed, and lead is not being stripped or
77 scrapped from the surface of such elements or fixtures while at
78 the residential premises. Where containment or abatement is to
79 occur in common areas, including the exterior, all occupants of
80 the premises shall be notified in writing. All containment or
81 abatement subject to this chapter shall, pursuant to regulations
82 promulgated by the director to ensure the safety of occupants, be
83 performed as follows:
84 (1) All peeling paint, plaster or other structural material
85 containing dangerous levels of lead, on both interior and exterior
86 surfaces and fixtures shall be contained or abated.
87 (2) Intact paint, plaster, or other structural material containing
88 dangerous levels of lead shall be contained or abated on door
89 frames below the five foot level and four inches from all edges;
90 stair rail spindles; stair treads from the lip to the riser on the

91 bottom and four inches back from the lip on the top of the tread;
92 doors below the five foot level and four inches from all edges; stair
93 rails; porch railings; and all other exterior and interior surfaces
94 and fixtures that may be readily mouthed by, or are otherwise
95 accessible to children.
96 (3) Peeling and intact paint, plaster or other accessible
97 structural material containing dangerous levels of lead shall be
98 contained or abated, on the interior and exterior surfaces of
99 windows having sills below the five foot level when surfaces are
100 either movable or impact on movable surfaces. Such surfaces shall
101 include, but are not limited to, interior and exterior window
102 sashes, window sills, and mullions; window wells and parting
103 beads; headers on the lower side of the window that impact on
104 the sash; and interior and exterior inner sides of the window
105 casings that impact on the sash.
106 (4) Exterior paint containing dangerous levels of lead shall be
107 contained or abated pursuant to regulations issued by the director,
108 after consultation with the department of environmental
109 protection and the Massachusetts historical commission,
110 specifying acceptable methods and prescribing shrouding or other
111 containment methods; provided, however, that the director may
112 ban sandblasting of exterior paint where he determines that
113 children under six years of age are at risk of exposure to dangerous
114 levels of lead. The use of potassium or sodium hydroxide in
115 removing exterior lead-based paint is prohibited. Such regulations
116 shall recommend appropriate methods of containment or
117 abatement for properties listed on the state register of historic
118 places. Local boards of health or code enforcement agencies shall
119 enforce compliance with this regulation.
120 (5) Paint chips, dust and other debris created by the
121 containment or abatement of interior or exterior paint shall be
122 cleaned up by the person performing the containment or
123 abatement in conformance with regulations promulgated by the
124 director.
125 (6) Containment or abatement and daily and final cleanup of
126 paint, plaster or other accessible structural material required
127 under this section shall be conducted only by a contractor licensed
128 by the department of labor and industries, except that the owner
129 of the residential premises or the owner's agent, acting pursuant

130 to regulations promulgated by the director specifying the
131 conditions under which owners or their agents may undertake
132 such containment or abatement, need not be licensed to engage
133 in such activities. Any person who is not licensed may undertake
134 containment or abatement activities only after successful
135 completion of a course of instruction approved by the commis-
136 sioner in consultation with the director detailing the proper
137 methods and health hazards of containment or abatement and
138 final cleanup of paint, plaster or other accessible structural
139 material; provided further that all containment or abatement
140 activities by an unlicensed person must be inspected and approved
141 after completion by a licensed inspector. Such regulations shall
142 include, but not be limited to, the removal of doors, windows,
143 woodwork or other elements or fixtures containing dangerous
144 levels of lead and shall address the presence of residents during
145 deleading and cleanup, provided that no paint containing such
146 dangerous levels of lead is stripped or scraped from the doors,
147 windows, woodwork, elements or fixtures while on the premises.
148 The director shall make available to the public standard guidelines
149 relative to owner deleading activities made permissible pursuant
150 to this section.
151 (7) The director may waive or requirements of this section
152 concerning the required containment or abatement of paint,
153 plaster or other accessible structural material on specified surfaces
154 and fixtures and/or specified substrates upon a finding by the
155 director that no substantial risk is posed to the health of children
156 under six years of age by the continued presence of such paint,
157 plaster or other accessible structural material.
158 (8) Under no circumstances shall repainting with a non-lead
159 based paint, without containment or abatement of the offending
160 paint, plaster or other accessible structural material, constitute
161 compliance with this section.
162 (9) The director shall on or before July 1, 1994 report to the
163 General Court concerning technologies then approved by the
164 department and available or expected to be approved by the
165 department and available in the reasonably foreseeable future for
166 making residential dwellings in compliance with this act,
167 including, but not limited to the encapsulation of paint, plaster
168 or other accessible structural material containing dangerous levels

169 of lead with an encapsulating material. The director is encouraged
170 to approve encapsulating products that can be applied by
171 homeowners.
172 (g) No person shall occupy a dwelling unit while stripping,
173 scraping or other activities resulting in dangerous levels of lead
174 in paint, plaster or other accessible structural materials is taking
175 place and until such time as the dwelling unit has been cleaned
176 up and found to be in compliance with this section, except
177 pursuant to regulations issued by the director. This subsection
178 shall not prevent occupancy while doors, windows, woodwork or
179 other elements or fixtures are being removed, provided that lead
180 is not being stripped or scraped from the surface of such elements
181 while at the residential premises. Such regulations shall allow for
182 occupancy when removal, covering, replacement or encapsulation
183 is taking place only in common areas and/or on exterior surfaces,
184 or when specified types of covering or encapsulation are being
185 used on interior surfaces, provided that no occupancy shall be
186 permitted while lead is being stripped or scraped from the surface
187 of any affected element and cleanup is taking place after stripping
188 or scraping. Notwithstanding other provisions of this paragraph,
189 such regulations shall provide that pregnant women and children
190 under the age of six are not permitted to occupy the dwelling unit
191 during deleading activities. The director may require the
192 implementation of additional safety precautions, including
193 additional requirements concerning containment and cleanup
194 prior to allowing occupants to enter affected areas. Any owner
195 undertaking to abate or contain dangerous levels of lead in any
196 dwelling may, at the owner's option, reasonably delay the
197 commencement of the tenancy until a letter of compliance has
198 been issued. During any such period of delay of occupancy the
199 prospective tenant shall bear any living expenses. Should the
200 owner decide to bring any residential unit into compliance with
201 this act while a tenant is occupying a dwelling unit, the owner shall
202 have the right to move the tenant to a substitute dwelling unit
203 of the owner's choice upon reasonable notice, provided that the
204 owner pays reasonable moving expenses and any use and
205 occupancy charges for a substitute dwelling unit which exceed the
206 rent for the vacated dwelling unit. However, if the tenant fails to
207 accept the substitute dwelling unit offered by the owner then the

208 tenant shall pay the use and occupancy charges for the substitute
209 dwelling unit selected by the tenant. During such period of time
210 reasonably required to bring the vacated dwelling unit into
211 compliance with this act, the owner shall have no obligation to
212 reimburse the tenant for any expense or inconvenience other than
213 moving expenses and any use and occupancy charges for the
214 substitute dwelling unit which may exceed the rent for the vacated
215 dwelling unit. Rent for the vacated dwelling unit shall be waived
216 during such period.
217 (h) A residential premises shall be deemed to be in compliance
218 with this section for children under six years of age to the deter-
219 mination of a licensed inspector issuing a letter of compliance
220 pursuant to section 197D. A letter of compliance shall be
221 revocable solely upon the failure of the owner to bring a unit or
222 property back into compliance within fourteen days, after an
223 order has been issued to the owner by the department, local code
224 enforcement agency or board of health and the owner has failed
225 to correct the conditions causing the unit or property to fall out
226 of compliance within the period ordered by the department, local
227 code enforcement agency, or board of health as described in
228 subsection (c) (5) of section 197D of chapter 111.
229 (i) Any person who violates the provisions of this section shall
230 be punished by a fine of not more than $1000.00 for each violation.
231 After being notified of a dangerous level of lead in paint, plaster
232 or other accessible structural material present upon his premises
233 pursuant to section 194, each day during which a residential
234 premises is out of compliance shall constitute a separate violation.
235 Whoever willfully violates the provisions of this section after being
236 notified of a dangerous level of lead in paint, plaster or other
237 accessible structural material present upon his premises pursuant
238 to section one hundred and ninety-four may be punished, in
239 addition, by imprisonment for not more than three months. The
240 district, superior and housing courts of the Commonwealth of
241 Massachusetts shall have jurisdiction to enforce the provisions of
242 this section. The director, all local boards of health or other code
243 enforcement agencies, including in the City of Boston the
244 Commissioner of Housing Inspection, may enforce this section
245 with full authority of the law. The director may provide by regu-
246 lation for the implementation by local boards of health, code

247 enforcement agencies and housing inspection agencies of the
248 provisions of this section and the periodic reporting to him of the
249 results of all actions undertaken hereunder by said boards and
250 agencies.

251 Violations of this section shall be treated as emergency matters
252 and shall be given preference by enforcing agencies and timely
253 hearings by district, superior and housing courts. Violations of
254 this section shall not constitute violations of the state sanitary code
255 or any other state or city enforcement code where an owner is
256 complying with an order to correct violations of a dangerous lead
257 level or has a valid letter of interim control or a letter of
258 compliance in effect; provided, however, that the state sanitary
259 code or any other state or city enforcement code shall be appli-
260 cable where the owner fails to comply with an order to correct
261 violations of a dangerous lead level or has a letter of interim
262 control and a letter of compliance revoked for failing to bring the
263 unit back into compliance; and provided further, that a tenant
264 shall not withhold rent for any violation of this section where the
265 owner is complying with an order to correct violations of a
266 dangerous lead level or has a valid letter of interim control or a
267 letter of compliance in effect and unless the tenant has notified
268 the owner or his agents, servants or employees or the person to
269 whom the tenant paid rent of such dangerous lead levels before
270 the tenant was in arrears in his rent.

271 In addition, persons found to have violated this section in an
272 enforcement action and/or who are fined or imprisoned pursuant
273 to this section shall not be precluded from contesting each and
274 every element of the violation, including but not limited to, the
275 presence of illegal levels of lead on the premises and the residency
276 of the child under the age of six years, in any subsequent civil
277 action brought to recover compensatory and/or punitive
278 damages.

1 SECTION 7. Section 197A of Chapter 111 of the General
2 Laws is hereby further amended by striking said section in its
3 entirety and inserting in place thereof the following: —

4 Section 197A. Notification to Prospective Purchasers and
5 Renters of Residential Premises Built Prior to 1978; Liability and
6 Penalties for Violation of Section.

7 Prospective purchasers of residential premises constructed
8 prior to nineteen hundred and seventy-eight shall be notified
9 about the hazards of lead in paint, plaster or other accessible
10 structural material in residential premises and the requirements
11 for their abatement or containment.

12 (a) The director shall, by July first, nineteen hundred and
13 eighty-eight prepare a standard notification form and such other
14 materials as may be necessary to inform prospective purchasers
15 about the possible presence of dangerous levels of lead in such
16 premises, the symptoms and treatment of lead poisoning, and the
17 requirements of the lead law and regulations, including the provi-
18 sions concerning liability for failure to abate or contain lead
19 hazards and prohibitions against unlawful discrimination. The
20 director shall prepare a separate notification form and materials
21 for prospective purchasers of residential properties containing one
22 or more rental units; such rental property notification materials
23 shall inform prospective purchasers, about issues specific to rental
24 properties such as liability insurance and prohibitions against
25 unlawful discrimination. Such forms and materials shall be
26 revised from time to time as appropriate.

27 (b) Effective July first, nineteen hundred and eighty-eight, all
28 persons selling residential premises constructed prior to nineteen
29 hundred and seventy-eight shall, prior to the signing of a purchase
30 and sale agreement, provide a copy of the form and other materials
31 prepared pursuant to subsection (a) to the prospective
32 purchaser. Effective January 1, 1994, all persons leasing
33 residential premises constructed prior to 1978 with an option to
34 purchase such premises shall, prior to the signing of the lease with
35 an option to purchase, provide a copy of the form and other
36 materials prepared pursuant to subsection (a) to the lessee/pro-
37 spective purchaser. In addition to and at the time of providing
38 said notification, such seller shall provide the prospective
39 purchaser with any letter of compliance for the residential
40 premises issued pursuant to subsection (d) of section one
41 hundred and ninety-seven of this chapter and such seller and any
42 real estate agent involved in the sale shall disclose to the
43 prospective purchaser any information known to the seller or real
44 estate agent about the presence of paint, plaster, or other
45 structural materials containing dangerous levels of lead in the
46 residential premises.

47 (1) The prospective purchaser shall also be informed by the
48 seller and any such real estate agent about the availability of
49 inspections for dangerous levels of lead. If, after receiving sald
50 notice, the prospective purchaser chooses to have an inspection
51 done, the seller shall afford the prospective purchaser a period
52 of ten days or such longer time as the seller and purchaser may
53 agree to have such inspection performed, either through a lead
54 inspection contingency in the purchase and sale agreement or
55 otherwise.
56 (2) If any real estate agent involved in the sale has provided
57 the prospective purchaser with the required information and
58 materials, they shall verbally inform the prospective purchaser of
59 the possible presence of dangerous levels of lead and the provi-
60 sions of the lead law and regulations. At that time or at any time
61 prior to signing of the purchase and sale agreement, any such real
62 estate agent shall obtain the prospective purchaser's certification
63 that he or she has been notified.
64 (c) Nothing in this section or this chapter shall be construed
65 to require the director, local boards of health or code enforcement
66 agencies to conduct lead inspections the sole purpose of which
67 is to inform sellers or prospective purchasers of residential
68 premises about the presence of dangerous levels of lead in sald
69 premises.
70 (d) Prospective tenants of residential premises constructed
71 prior to 1978 shall be notified about the hazards of dangerous
72 levels of lead as follows:
73 (1) The director shall, by December 1, 1994, prepare a standard
74 notification brochure and such other materials as may be
75 necessary to inform such prospective tenants and property owners
76 about the hazards associated with dangerous levels of lead; the
77 symptoms and treatment of lead poisoning; measures which can
78 be taken by parents and property owners to reduce the risk of
79 lead exposure to children; and the requirements of the lead law
80 and regulations. Such materials shall also describe the significance
81 of letters of interim control, letters of compliance and abatement
82 plans and the need for tenants to promptly notify owners and code
83 enforcement officials in writing whenever an intact painted surface
84 begins to peel or flake. The director shall also prepare a standard
85 form to be distributed by owners to prospective tenants which

86 shall include the name, address and telephone number of the
87 owner or the owner's managing agent and the address and
88 telephone number of the state childhood lead poisoning
89 prevention program. In addition, the owner shall disclose any
90 information actually known by the owner concerning the location
91 of paint, plaster or other materials containing dangerous levels
92 of lead, including those surfaces which are intact, covered or
93 encapsulated.
94 (2) Effective December 1, 1994, prior to entering into a tenancy
95 agreement, the owner of any residential premises constructed
96 prior to nineteen hundred and seventy-eight or such other person
97 to whom rent is to be regularly paid, shall provide such prospective
98 tenants with:
99 (i) a copy of the materials and standard form completed
100 pursuant to subsection (a);
101 (ii) a copy of the most recent lead paint inspection report, letter
102 of interim control, letter of compliance or abatement plan appli-
103 cable to the dwelling unit and to the common areas or exterior
104 surfaces of the residential premises;
105 (iii) two copies of a statement certifying that the prospective
106 tenant received all of the above materials, one copy of which is
107 to be retained by the tenant and one by the owner. For purpose
108 of this section it shall be permitted to include such certification
109 in a written tenancy agreement.
110 (e) Any person who fails to comply with the provisions of this
111 section shall be liable for all damages caused by the failure to
112 comply and, in addition, shall be subject to assessment of a civil
113 penalty, in an amount not to exceed one thousand dollars. A
114 violation of this section by a person engaged in trade or commerce
115 shall be an unfair and deceptive act or practice as defined in section
116 two of chapter ninety-three A.
117 (f) The receipt by a tenant or prospective tenant of a
118 notification brochure or other disclosure materials from an owner
119 pursuant to this section shall not operate or be construed as a bar
120 to any claim for liability by the tenant and/or their minor children
121 against the owner.
122 (g) The disbursement by an owner of a notification brochure
123 to a tenant shall not operate as an admission of liability, whether
124 it be strict liability or reasonable standard of care, to any claim

for liability by the tenant and/or their minor children against the owner.

SECTION 8. Said chapter 111 is hereby further amended in subsection (a) of section 197B by adding at the end of the first paragraph the following new sentences: The director shall periodically assess the number of applications for licensed lead paint inspectors and may increase the frequency of training sessions required for licensure if necessary in order to process said applications in an efficient and timely fashion. The director may ensure that there are a sufficient number of training sites available throughout the commonwealth.

SECTION 9. Said chapter 111 is hereby further amended in subsection (a)(1) of sald section 197B by adding the following new sentence: No person who receives such license after January 1, 1994 shall be or continue to be licensed by the department of labor and industries as a deleader.

SECTION 10. Said chapter 111 is hereby further amended in subsection (b)(1) of said section 197B by adding the following new sentences: Said department shall periodically assess the number of applications for licensed deleaders and may increase the frequency of training sessions required for licensure if necessary in order to process sald applications in an efficient and timely manner. Said department may also ensure that there are a sufficient number of training sites available throughout the commonwealth.

SECTION 11. Said chapter 111 is hereby further amended in subsection (b)(2) of said section 197B by adding the following new sentence: No person who receives such license after January 1, 1994 shall be licensed or continue to be licensed by the department of public health as a lead inspector.

SECTION 12. Chapter 111 of the General Laws is hereby amended by inserting after section 197B the following new section: —

Section 197C. (a) The director shall, no later than ninety days after enactment of this act, promulgate regulations to establish a program of interim control measures to address urgent lead paint hazards that include, but are not limited to, paint containing a dangerous level of lead that is chipping, peeling or flaking and highly contaminated lead dust. Interim control measures shall be used to address said urgent lead hazards until an in-place management plan or abatement plan has been certified or letter of compliance has been obtained pursuant to section 197. The owner of a residential property containing a dangerous level of lead must obtain a letter of interim control from and certified by an inspector licensed under section one hundred and ninety-seven B after an inspection and assessment of the dwelling unit by said inspector. Regulations promulgated by the director under this section may include the following:

(1) A determination by the inspector regarding the need to correct structural defects, including leaking roofs, plumbing and deteriorating windows, which may cause damage to surfaces containing dangerous levels of lead;

(2) Removal of loose paint and paint chips and installing safeguards to protect intact paint;

(3) Removal of lead dust through washing, vacuuming and cleaning of the interior of the dwelling unit and inspection of said unit to ensure that surface dust levels meet specified standards;

(4) Provision of educational materials prepared by the department to tenants occupying the affected unit.

(b) The owner of dwelling units that have received letters of interim control by a licensed inspector as described above shall have said units reinspected, reassessed and recertified on an annual basis unless subject to section 197E.

(c) A letter of interim control for the owner of a residential property pursuing compliance through in-place management shall be valid until two years after approval of a method of encapsulation of paint containing dangerous levels of lead by the department of public health. A letter of interim control for the owner of residential property pursuing lead abatement shall be valid in accordance with the terms of said owner's approved abatement plan provided that no letter of interim control shall be valid for a period in excess of five years.

(d) A letter of interim control shall be revocable by operation of law upon occurrence of any of the following conditions: (i) expiration by its own term; (ii) upon the failure of the owner to bring a unit back into compliance within fourteen days after being ordered to do so by the department, local code enforcement agency or board of health or within a greater period of time as may be allowed by the department or by judicial order. If a tenant or licensed lead paint inspector finds that the dwelling unit contains peeling paint or otherwise fails to meet the standards of the letter of interim control sald tenant or inspector shall notify the owner of the unit and the local code enforcement agency of said failure by written certified mail. Upon receipt of the notification, the local code enforcement agency shall have fourteen days to inspect said unit and either recertify the letter of interim control or issue an order to correct violations.

(e) No claim for strict liability for violation of this act may be brought agalnst the owner of or owner's agent of residential premises constructed before nineteen hundred and seventy-eight by an occupant or former occupant of a dwelling unit for which a letter of interim control has been issued, for injury or damage caused by exposure to dangerous levels of lead during such period that the letter of interim control was in effect. Notwithstanding the provisions of this subsection, the owner shall remain subject to a standard of reasonable care relative to compliance with this act.

SECTION 13. Chapter 111 of the General Laws is hereby amended by inserting after section 197C the following new section: —

Section 197D. (a) The director shall, no later than ninety days after enactment of this act, prepare one or more standard formats for letters of compliance which may be revised from time to time as appropriate. All licensed inspectors shall use such standardized formats in issuing letters of compliance.

(b) A letter of compliance shall clearly state (i) which interior and exterior surfaces contain intact paint, plaster or other accessible structural material containing dangerous levels of lead and which have been contained; (ii) which interior and exterior surfaces have been abated of paint, plaster or other accessible

structural material containing dangerous levels of lead; (iii) conditions under which said letter may be revoked, including but not limited to, failure by owners to maintain the containment of said paint, plaster or other accessible structural material; provided that the owner shall have fourteen days to bring the unit back into compliance after being ordered to do so by the department, local code enforcement agency or board of health or within a greater period of time as may be allowed by the department or by judicial order.

(c) Owners whose eligibility for a letter of compliance to an in-place management plan has been determined by a licensed inspector pursuant to section 197 of this chapter must obtain either a letter of interim control pursuant to section 197C of said chapter or a letter of compliance with in-place management. A letter of compliance with in-place management shall be issued by a licensed inspector upon his or her determination that:

(1) Intact paint, plaster or other accessible structural material are encapsulated as outlined in the in-place management plan no later than two years after approval by the department of a commercially available method of encapsulation.

(2) Accessible mouthable surfaces as defined under section 197F (2) are contained or abated.

(3) Lead dust generating items are removed or replaced or, at minimum, paint, plaster or other accessible structural material containing dangerous levels of lead are eliminated from friction surfaces.

(4) The unit meets final clean-up compliance requirements established by the director including demonstrations that dust lead levels meet accepted standards.

(5) Loose, peeling, flaking paint and intact paint on accessible mouthable exterior surfaces have been contained or abated.

The department shall promulgate regulations for annual inspections to ensure the continued validity of each letter of compliance with in-place management. Said inspections may be conducted by authorized local boards of health or code enforcement authorities. A letter of compliance shall be revocable by operation of law upon occurrence of any of the following conditions: (i) upon the failure of the owner to maintain the conditions of the letter of compliance; (ii) if a tenant or licensed

53 lead paint inspector finds that the dwelling unit fails to meet the
54 standards of the letter of compliance said tenant or inspector shall
55 notify the owner of the unit and the local code enforcement agency
56 of said failure by written certified mail and the owner fails to bring
57 the unit back into compliance within fourteen days after being
58 ordered to do so or within a greater period of time as may be
59 allowed by the department or by judicial order. Upon receipt of
60 the notification that the dwelling fails to meet the standards of
61 the letter of compliance, the local code enforcement agency shall
62 have fourteen days to inspect said unit and either recertify the
63 letter of compliance or issue an order to correct violations.
64 (d) Owners not eligible for a letter of compliance for an in-place
65 management plan pursuant to said section 197 must obtain a letter
66 of interim control pursuant to section 197C which shall expire
67 upon the issuance of a letter of compliance to an abatement plan.
68 The schedule for completion of abatement plans shall be
69 determined pursuant to regulations promulgated in accordance
70 with section 197. However, for owners of premises with more than
71 four dwelling units abatement plans shall be completed in not
72 more than five years. For secured lending institutions abatement
73 plans shall be completed in not more than one year.
74 The owner of any residential premises containing one or more
75 rental units may submit to the director an abatement plan
76 prepared by a licensed lead inspector in consultation with the
77 property owner specifying a schedule and plan for bringing all
78 rental units in the premises occupied by a child under six years
79 of age and all units which become vacant during the time period
80 covered by the plan into compliance with this chapter and all regu-
81 lations promulgated thereunder. The director shall establish
82 conditions of an abatement plan, including but not limited to, a
83 requirement that a property owner obtain at a minimum a letter
84 of interim control for every unit in the premises occupied by a
85 child under six years of age as a prerequisite to submission of a
86 plan. The director shall approve such an abatement plan provided
87 that the owner has demonstrated that: (i) all units, common areas
88 and exterior surfaces will be brought into compliance in a
89 reasonable manner; (ii) specified precautions and/or maintenance
90 activities will be undertaken to minimize the risk of lead exposure
91 during the period covered by the abatement plan; and (iii) first

92 priority shall be given to units occupied by children under six.
93 The director shall approve any abatement plan submitted by an
94 owner of premises which provides for the orderly removal,
95 covering, replacement or encapsulation of dangerous levels of lead
96 and upon such other terms which the director may reasonably
97 require. Approval shall not be unreasonably withheld. The
98 director shall approve or disapprove such plans within ninety (90)
99 days after submission by the owner, provided that the director
100 may impose such condition on plan approval as may be necessary
101 or desirable to protect the health of occupants of the residential
102 premises. If no action has been taken within ninety (90) days a
103 plan is deemed to have been approved. The time schedule for
104 abatement or containment set forth in an approved abatement
105 plan shall apply, except that the time for abatement or
106 containment of a dwelling unit may be shortened by order from
107 an enforcement agency, pursuant to section one hundred and
108 ninety-four of chapter one hundred and eleven, upon a determi-
109 nation that the unit is occupied by a lead poisoned child under
110 six years of age.
111 Abatement orders must require that any source of damage such
112 as leaking roofs, plumbing and windows must be repaired or
113 replaced, as needed, to prevent damage to lead containing interior
114 surfaces.

1 SECTION 14. Chapter 111 of the General Laws is hereby
2 further amended by inserting after section 197D the following new
3 section: —
4 Section 197E. (a) If, after the issuance of a letter of compliance
5 pursuant to section 197D, a child under the age of six exhibits
6 a blood lead level in excess of the level considered dangerous to
7 the child's immediate health as determined by the department, the
8 director shall immediately review the appropriateness of the
9 issuance and take such corrective measures as may be necessary.
10 If after such a review, the director determines the issuance to be
11 appropriate, the department shall conduct an environmental
12 investigation to determine, to the extent possible, the cause of said
13 excess blood lead level. In no event shall an owner in possession
14 of a letter of compliance be held strictly liable for injury or damage
15 caused by exposure to dangerous levels of lead during such time
16 that the letter of compliance was in good standing.

(b) If, during compliance with interim controls established pursuant to section 197C, a child under the age of six exhibits a blood level in excess of the level considered dangerous to the child's immediate health as determined by the department, the department shall immediately review said interim controls and may alter any abatement plan previously agreed to so as to require the immediate abatement pursuant to the provisions set forth in section 197D of the unit wherein said child resides. In no event shall revision of a letter of interim control or an abatement plan pursuant thereto be construed as the failure of the owner to follow an approved abatement plan.

SECTION 15. Chapter 111 of the General Laws is hereby amended by inserting after section 197E the following new section: —

Section 197F. (a) No secured lender shall be considered an owner for purposes of sections one hundred and ninety to one hundred and ninety-nine B unless and until such secured lender has acquired legal title pursuant to applicable law, and takes actual physical possession, at which point he shall be considered an owner; provided that, a secured lender who has acquired legal title pursuant to applicable law shall be liable in any action brought pursuant to section one hundred and ninety-nine only to the following extent: Within one year after acquiring legal title to a residential property, such secured lender shall either (i) obtain an interim control letter pursuant section one hundred and ninety-seven C, (ii) obtain a letter of compliance pursuant to section one hundred and ninety-seven D, (iii) receive approval for an abatement plan pursuant to section one hundred and ninety-seven D, or (iv) transfer the property following the procedures required by section one hundred and ninety-seven A. A secured lender who does not take one of such actions within the specified time period shall be fully liable for all damages, including punitive damages, under section one hundred and ninety-nine. A secured lender who elects to pursue the options identified in clause (i), (ii) or (iii) of the preceding sentence shall be subject to the provisions of the applicable sections of this chapter with respect to procedures for obtaining a letter of compliance, a letter of interim control, or approval of an

abatement plan. Within the first sixty days of such period, the secured lender shall also obtain a letter of interim control pursuant to section 197C for any dwelling unit in which a child under the age of six resides.

(b) A secured lender who has acquired legal title pursuant to applicable law of a residential premises constructed prior to 1978 in which any paint, plaster or other accessible material contains dangerous levels of lead may recover from the mortgagor any monies expended in bringing the premises into compliance with sections 190 through 199A of this chapter, provided that the mortgagor shall not be liable for such contribution if the mortgagor establishes that no child under six years of age resided in the residential premises while the premises were owned by the mortgagor.

(c) For the purpose of this section, the term "secured lender" means: (1) a person; corporation; or other entity who holds indicia of ownership in a residential property primarily to protect that person's security interest in said residential property; (2) two or more persons; corporations; or other entities when one holds indicia of ownership in a residential property primarily to protect the other person's security interest in that residential property, if the person; corporation; or other entity, holding the indicia of ownership is (a) wholly owned by the person; corporation; or other entity holding the security interest, or (b) an affiliate of the person; corporation; or other entity holding the security interest and both are wholly-owned, directly or indirectly, by the same person; corporation; or other entity and (3) persons; corporations; or other entities who hold contractual participation rights in a security interest, and any of the following which hold indicia of ownership in a residential property primarily to protect that security interest; a wholly-owned subsidiary of any such person, corporation, or other entity; an affiliate of any such person, corporation, or other entity if both are wholly-owned, directly or indirectly, by the same person; corporation, or other entity; and any entity formed among such persons, subsidiaries, or affiliates.

SECTION 16. Said chapter 111 is hereby further amended by striking out section 199 and inserting in place thereof the following section: —

Section 199. (a) Except as provided in section one hundred and ninety-seven F, the owner of any residential premises shall be liable for all damages to a child under six years of age at the time of poisoning and upon proof that said child's blood lead level equals or exceeds the blood lead level deemed to be poisoned by the department caused by his failure to comply with the provisions and requirements of subsection (a) of section 196, section 197, section 197C or section 197D and regulations pursuant thereto; provided, however, that the owner of any residential premises who complies with the provisions and requirements of sections one hundred and ninety-seven, one hundred and ninety-seven C, one hundred and ninety-seven D and regulations pursuant thereto, shall not be strictly liable under this section for damages caused by exposure to dangerous levels of lead. Notwithstanding the provisions of this subsection, the owner shall remain subject to a reasonable standard of care relative to compliance with this act.

(b) Except as provided in section one hundred and ninety-seven F, the owner of any residential premises who is notified pursuant to the provisions of this chapter of a dangerous level of lead in paint, plaster, or other accessible structural material present upon his premises or who receives a notice or order to comply concerning dangerous levels of lead from the director, a local board or department of health or a code enforcement agency, and who fails to take the actions required by this chapter, regulations issued pursuant thereto or the order to remedy said dangerous conditions by the deadlines contained in the applicable regulations or order, shall, in addition to the provisions of the preceding paragraph, be subject to punitive damages, which shall be treble the actual damages found.

(c) An owner who is held liable under this section and who seeks contribution pursuant to chapter two hundred and thirty-one B against the parent or guardian of a child who has been awarded damages under this section shall bring a separate action after a judgment has been entered against him; provided, however, that such action must be brought within one year after the judgment has become final.

(d) the new owner of any residential premises which has undergone a change of ownership as a result of which a child under

six years of age is or will be a resident shall not be strictly liable for damages under this section if such new owner complies with the requirements of this chapter within 90 days after becoming the owner.

SECTION 18. Section 199A of chapter one hundred and eleven of the General Laws is hereby amended by striking the words "mortgagee", "finance" and "financing" wherever they appear in the first sentence of paragraph (a) and by striking the last sentence of paragraph (a).

SECTION 19. Chapter 111 is hereby amended by inserting after subsection 199A the following subsection: —

Section 199B. The provisions of sections one hundred and ninety through one hundred and ninety-nine A shall not apply to any dwelling unit having fewer than two hundred fifty square feet of floor space calculated on the basis of total habitable room area or which is used as a rooming house as defined in the Sanitary Code, 105 C.M.R. 410.039 provided that no person occupying said dwelling unit may be less than six years of age.

SECTION 20. Chapter one hundred and sixty-seven of the General Laws is hereby amended by adding after section forty-seven the following new section:

Section 48. No bank, lending institution, credit union or mortgagee pursuant to applicable law, or mortgagee doing business in the commonwealth, which for the purposes of this section shall include any bank as defined in section one and shall include any national bank, national banking association, federal savings bank, federal savings and loan association, and federal credit union, or mortgage company defined in chapter 255E shall discriminate in any manner in the financing or refinancing of the purchase, improvement, repair or maintenance of a residential premises or dwelling unit solely because the residential premises do or may contain paint, plaster, or other structural materials containing dangerous levels of lead. Any such bank, lending institution, credit union, mortgage company or mortgagee may request and receive a copy of any lead inspection report, letter of interim control, letter of compliance for in-place management

or abatement, abatement plan, or order to comply issued under the provisions of section one hundred and ninety-four or one hundred and ninety-seven of chapter one hundred and eleven or regulations promulgated thereunder which is in the possession of either the loan applicant or seller, as a condition of processing or granting the loan. Nothing contained in this section shall restrict the right of any such bank, lending institution, credit union, mortgage company or mortgagee to process or deny a mortgage or loan application in accordance with accepted underwriting practices or criteria.

SECTION 21. Chapter 175 of the General Laws is amended by inserting after section 111G the following section: —

Section 111H. The commissioner of insurance shall adopt reasonable rules and regulations or advisory guidelines on or before the first day of January nineteen hundred and ninety-four designed to achieve the goal of Chapter 111, Sections 190-199, of encouraging preventative lead abatement activities by residential property owners.

Such rules and regulations shall be designed to ensure the availability of liability insurance for owners of residential property who have acted to their premises into compliance with this act for children under age six. Such regulations shall provide that:

(a) Any blanket or general policy of insurance which provides liability insurance to the owner of any residential premises constructed prior to 1978 shall cover claims for injury or damage resulting from exposure to dangerous levels of lead in dwelling units for which a letter of interim control or letter of compliance to an abatement plan or to an inplace management plan is in effect.

(b) Any such liability insurance policy shall thereafter be endorsed to add coverage for injury or damage resulting from exposure to dangerous levels of lead in dwelling units if the owner, within ninety days after issuance or renewal of the policy, obtains and maintains in effect a letter of interim control or letter of compliance.

(c) Companies which offer such liability insurance policies may make available additional coverage for injury or damage resulting from exposure to dangerous levels of lead in dwelling units located in residential premises constructed prior to 1978 for which the

owner has not obtained a letter of interim control or letter of compliance.

SECTION 22. Chapter 708 of the Acts of 1986, as most recently amended by Chapter 679 of the Acts of 1989, is hereby further amended by adding the following subsection:

Section 17. Without limiting the powers of the MHFA otherwise granted by this chapter, the MHFA, or any subsidiary, subordinated, independent, or affiliated entity thereto or established thereby in accordance with this chapter, may administer a deleading mortgage guarantee program to guarantee claims against deleading mortgages in default purchased by the MHFA or made by mortgage lenders. A Deleading Mortgage Guarantee Fund may be established by no later than January 1, 1994 using such sums as may be appropriated acquired or received for this purpose, including but not limited to the proceeds resulting from section twenty-five of chapter four hundred and ninety-nine of the acts of nineteen hundred and ninety.

SECTION 23. Section 1 of Chapter 708 of the Acts of 1966, as most recently amended by Chapter 679 of the Acts of 1989, is hereby amended by adding the following subsection: —

(m) "Deleading mortgage", a loan, including a home improvement loan made by or on behalf of the MHFA or acquired by the MHFA, or by a mortgage lender of a conventional loan, secured by a mortgage, note, bond or other obligation constituting a lien upon real property or by a lease of the fee of real property a pledge of stock in a cooperative and an assignment of a proprietary lease on real property located in the commonwealth and improved by a residential building, or a portion of such a loan, the proceeds of which are to be used for the purpose of abating or containing paint, plaster or other accessible materials containing dangerous levels of lead pursuant to the provisions of sections one hundred and ninety through one hundred and ninety-nine A of chapter one hundred and eleven.

SECTION 24. Any regulations, rules, amendments, certifications, licenses or standards promulgated under the provisions of this act, unless otherwise indicated, shall be filed for review with

4 the joint committee on health care and the joint committee on
5 housing and urban development at least thirty days before the
6 effective date of said regulations, rules, amendments, certifica-
7 tions, licenses or standards.

1 SECTION 25. Any regulations, rules, amendments, certifica-
2 tions, licenses or standards promulgated under the provisions of
3 this act shall be consistent with and not contradict any federal
4 laws, guidelines, or regulations relating to lead-based paint
5 poisoning or its reduction, removal or abatement.

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